

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-141-T

IN RE:)	
Application of U-Haul Co. of South Carolina,)	BRIEF OF THE SOUTH
Incorporated for a Class E (Household Goods))	CAROLINA OFFICE OF
Certificate of Public Convenience and Necessity)	REGULATORY STAFF
for Operation of Motor Vehicle Carrier)	ADDRESSING JURISDICTION

On January 20, 2010 the South Carolina Public Service Commission issued a Directive suspending the hearing in the above referenced matter and *sua sponte* requesting that “the parties file briefs no later than the close of business on January 25, 2010, addressing the authority of the Commission over this matter under federal law.”

Although the Commission has not specified which federal law the Commission suspects may remove this matter from its jurisdiction, the Office of Regulatory Staff (“ORS”) believes that any questions regarding a conflict of laws or jurisdiction were addressed in Commission Order No. 2001-1141 (December 21, 2001) in Docket No. 2001-330-T.

In support of its finding of jurisdiction in Docket 2001-330-T the Commission relied primarily on the language of S.C. Code Ann. §58-23-20 (Supp. 2008). ORS notes that no changes or amendments have been made to this statute since 1989. Although portable storage units themselves may not be subject to Commission regulation, as Order 2001-1141 clearly states, any party which transports such containers filled with household goods over South Carolina roads for compensation requires a Class E Certificate of Public Convenience and Necessity approved by the Commission.

In 2007 ORS proposed that the Commission adopt changes to its regulations to clarify the Commission’s jurisdiction over portable containers used to ship household goods. Specifically, on


January 31, 2008 ORS filed a letter with the Commission in Docket 2007-445-A proposing a change to 26 S.C. Code Regs. 103-102(27) to clarify that entities transporting household goods intrastate “for compensation” in portable storage containers must obtain a Class E certificate of public convenience and necessity to operate in South Carolina.

On November 13, 2008 Mr. David Popowski, Esq., attorney for PODS Enterprises, Inc., filed comments with the Commission in the same Docket. In that letter Mr. Popowski cited a federal law (49 U.S.C. §13101 (12) (C)) which provides a limited service exclusion for interstate motor carriers which transport household goods containers or trailers entirely loaded or unloaded by someone other than the motor carrier. Mr. Popowski’s argument in Docket 2007-445-A is essentially the same which he made in Docket 2001-330-T; that the federal exemption for the interstate transportation of storage containers should be adopted by the Commission for the intrastate transportation of household goods in portable containers.

In Order 2008-832, dated December 17, 2008, the Commission abstained from adopting the ORS recommended changes to Regulation 103-102 and held the issue in abeyance pending “additional study by the Commission.” To ORS’s knowledge, no additional information, studies, or arguments have been made by or to the Commission since Order No. 2008-832 was issued in December 2008. ORS therefore believes that the precedent regarding the issue of the Commission’s jurisdiction over intrastate transporters of portable storage containers remains that established in Order No. 2001-1141. This precedent has been followed by the Commission in Orders 2002-804, 2004-252, 2005-368, and 2005-651.

None of the parties in the current action has challenged the Commission’s jurisdiction. Neither have any parties filed any testimony, evidence, or case citations questioning or challenging the Commission’s jurisdiction to rule on the Application of U-Haul Co. of South Carolina, Incorporated. ORS knows of no change in federal or state law which should alter the Commission’s findings and conclusions in Order No. 2001-1141.

In conclusion, ORS agrees with the Commissions statement on page 3 of Order No. 2001-1141 that "it is in the public interest to regulate this type of transportation of household goods."



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January 22, 2010
Columbia, South Carolina

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2009-141-T

IN RE:

Application of U-Haul Co. of South Carolina,)	
Incorporated for a Class E (Household Goods))	CERTIFICATE OF
Certificate of Public Convenience and Necessity)	SERVICE
for Operation of Motor Vehicle Carrier)	

This is to certify that I, Chrystal L. Morgan, have this date served one (1) copy of the **BRIEF OF THE OFFICE OF REGULATORY STAFF ADDRESSING JURISDICTION** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

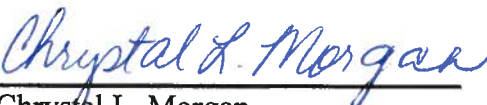
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Chrystal L. Morgan

January 22, 2010
Columbia, South Carolina